



# **TOWN OF TEWKSBURY ZONING BOARD OF APPEALS**

999 Whipple Road  
Tewksbury, MA 01876

Robert Dugan, Chairman  
Len Dunn, Vice Chair  
Gerald Kutcher  
**Associate Members:**  
Jaime Doherty  
Dianne Bartalamia

**DEPARTMENT OF COMMUNITY DEVELOPMENT**

## **MEETING MINUTES July 30, 2015**

The meeting was called to order by Len Dunn, Vice Chairman, at 6:30 p.m. at the Pike House (temporary town hall). Present at the meeting were Rob Dugan, Gerald Kutcher, Diane Bartalamia, Jaime Doherty, and Melissa Johnson, Recording Secretary.

### **Approval of Meeting Minutes – June 25, 2015**

**MOTION:** Mr. Dugan made the motion to approve the June 25, 2015 meeting minutes; seconded by Mr. Kutcher and the motion carried 5-0.

### **NEW HEARINGS**

**Robert Socha and Tiffany Caron** for a variance under Section 4130, Appendix B and a Special Permit under Section 3651 of the Tewksbury Zoning Bylaw to construct a 6' x 34' front porch as shown on plans filed with this Board. Said property is located at **41 Patten Road**, Assessor's Map 56, Lot 124, zoned Residential.

Present was Robert Socha and Tiffany Caron of 41 Patten Road. Ms. Caron explained that they are present to request a variance to construct a front porch. Mr. Dunn requested additional drawings of the front of the home and Ms. Caron noted that they submitted a plot plan with the original application.

Mr. Socha noted that there is approximately 4'9" of buildable space and they are seeking an additional 15" to make it a 6' farmer's porch. The porch will only be the length of the house and will not extend around the side of the home.

Mr. Dunn asked if the relief being sought is 2' and noted that the setback requirement is 25' and the porch will be at 23.8' and the applicants confirmed this.

Mr. Dugan asked when the home was constructed and Mr. Socha noted 1952.

Mr. Dunn opened the hearing to the public and no one came forward to comment.

**MOTION:** Mr. Dugan made the motion to close both parts of the hearing; seconded by Ms. Doherty and the motion carried 3-0.

**MOTION:** Mr. Dugan made the motion to approve Robert Socha and Tiffany Caron for a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw to construct a 6' x 34' front porch as shown on plans filed with this Board. Said property is located at 41 Patten Road, Assessor's Map 56, Lot 124, zoned Residential; seconded by Ms. Doherty and the motion carried 3-0.  
DUNN, DUGAN, DOHERTY

**MOTION:** Mr. Dugan made the motion to approve Robert Socha and Tiffany Caron for a Special Permit under Section 3651 of the Tewksbury Zoning Bylaw to construct a 6' x 34' front porch as shown on plans filed with this Board. Said property is located at 41 Patten Road, Assessor's Map 56, Lot 124, zoned Residential; seconded by Ms. Doherty and the motion carried 3-0.  
DUNN, DUGAN, DOHERTY

**Attorney Jared Eigerman for BGM 358 Shawsheen LLC** as a party aggrieved under Section 3650 for review of a decision made by the Building Commissioner in a letter dated July 9, 2015. For a Special Permit from Section 3651 of the Tewksbury Zoning Bylaw to raze the existing structure and construct a new single family dwelling as shown on plans filed with this Board. Said property is located at **358 Shawsheen Street**, Assessor's Map 70, Lot 59, zoned Residential.

Mr. Dunn noted that the applicant has requested to continue this matter to September 24, 2015.

Mr. Sadwick, Director of Community Development, came forward and noted that the applicant is also requesting an amendment to withdraw the party aggrieved portion.

**MOTION:** Mr. Dugan made the motion to withdraw Attorney Jared Eigerman for BGM 358 Shawsheen LLC as a party aggrieved under Section 3650 for review of a decision made by the Building Commissioner in a letter dated July 9, 2015 without prejudice. Said property is located at 358 Shawsheen Street, Assessor's Map 70, Lot 59, zoned Residential; seconded by Mr. Kutcher and the motion carried 3-0.  
DUGAN, DUNN, KUTCHER

**MOTION:** Mr. Dugan made the motion to continue Attorney Jared Eigerman for BGM 358 Shawsheen LLC for a Special Permit from Section 3651 of the Tewksbury Zoning Bylaw to raze the existing structure and construct a new single family dwelling as shown on plans filed with this Board to September 24, 2015 at 6:30 p.m. Said property is located at 358 Shawsheen Street, Assessor's Map 70, Lot 59, zoned Residential; seconded by Mr. Kutcher and the motion carried 3-0.  
DUGAN, DUNN, KUTCHER

The Board took a five minute recess to reorganize.

Mr. Dugan acted as Chairman.

**DSF IV Tewksbury Owner, LLC**, for a modification of the Comprehensive Permit issued on May 26, 1988 as recorded at the Middlesex North Registry of Deeds in Book 4982, Page 326, to address the affordability restriction and other regulatory conditions. Said property is located at **11 Old Boston Road**, Assessor's Map 48, Lots 21, 33, and 80, zoned multi-family, commercial and Village Mixed Use Overlay Districts.

Present was Attorney Ted Regnante, Special Council to the property owner, Attorney Craig Dudaro, General Council for the property owner, Attorney Mark Barbrowski, Special Town Council, and Attorney Charles Zaroulis, Town Council.

Attorney Barbrowski noted that he is pleased to report that they have reached an agreement; which they feel is the first of its kind in Massachusetts history of Chapter 40B. Attorney Barbrowski explained that the building with 77 units was, arguably, beyond the period of restriction for affordability. The town has negotiated with all entities involved, including Mass Housing and DHCD, and he is pleased to report that all 77 units will be preserved and remain on the town's Subsidized Housing Inventory (SHI). Attorney Barbrowski explained that the property owner applied for an insubstantial change to verify that the affordability restriction had ended. The Board determined it to be a substantial change, commencing a public hearing; which has been continued for approximately two years while the details were worked out. DHCD and Mass Housing would prefer to call this an amendment rather than a substantial change as they feel it could set precedence. As a result, they have re-titled this "Amendment to Comprehensive Permit". The amendment establishes that 25% of the units will be affordable to people of moderate income. Attorney Barbrowski explained that because there are 77 units, there will be 20 affordable units of which 2 tenants already qualify leaving 18 units that remain to be filled. The owner has stated that they will make those units available as soon as possible; January 1, 2016. Attorney Barbrowski noted that there is a marketing plan that has been undertaken by the owner of the building to create advertisements and a lottery system will be put in place to fill the 18 units. Attorney Barbrowski explained that because of this process, DHCD became aware of the fact that the building is currently not occupied with 20 affordable households and they intend to take the units off of the SHI and add the units as they are filled. Until 25% of the units are filled they will not count any units on the inventory and the subsidizing agency will be Mass Housing rather than DHCD.

Attorney Barbrowski explained that this is a three part deal with the first part being the amendment of the comprehensive permit. A modified Regulatory Agreement will then be negotiated between the developer and Mass Housing. Mass Housing will guarantee that the units will remain affordable for their period of restriction, 30 years, and will monitor the project to ensure the owner of the building is doing what they promised to do. The owner of the building, working with Mass Housing, will annually recertify that the tenants in the affordable units are eligible. Because the Town bargained for perpetuity, and is paying \$1.7 million for the perpetuity, and the Mass Housing Restrictions will expire in 30 years, as well as their monitoring function, a local regulatory agreement is being added that will travel with the property for as

long as the property remains the site of affordable housing. The town will take over the monitoring function after 30 years.

Attorney Barbrowski noted that he has provided the members with a copy of the settlement statement and referenced the provisions that have been added for casualties such as fire. Attorney Barbrowski explained that a standard regulatory agreement typically states that if the building is lost to a casualty they have to keep the same number of units, but there is nothing that states the owner is required to rebuild. If the town gives \$1.7 million and the building burns down and is not reconstructed, the town loses. To address this, they have added that the same amount of affordable units must be maintained if the building is rebuilt. If the building is not rebuilt, the affordable units would be added to one of the other buildings on the site.

Attorney Barbrowski noted that a concern for the property owner is the Regulatory Agreement could be recorded and the money not given. Attorney Barbrowski requested the Board approve the amendment and explained that he will not file with the Town Clerk until approximately October 16, 2015. After they have negotiated the Regulatory Agreement with DHCD, he will file with the Town Clerk; which will then open the 20 day appeal period. Once the appeal period has come and gone, Attorney Barbrowski will release the Comprehensive Permit and Regulatory Agreement and pay them for as many units that are open at that time.

Mr. Dunn asked if the new property owner was aware of these issues when they purchased the property. Attorney Barbrowski explained that the affordability restriction allegedly expired in 2010 and the current property owner purchased the property after that time with the knowledge that the matter was before the Board and with good faith to negotiate this matter with the town.

Attorney Regnante explained that because this is a rental project, all 77 units will be counted on the SHI bringing the town even closer to its 10%. Steve Sadwick noted that the town will be at 9.6% with the 77 units.

Mr. Dugan asked who filed for the non substantial change in 2013 and Attorney Regnante noted that he did.

Mr. Dunn asked if the Board is voting to spend the town's money. Steve Sadwick, Director of Community Development, came forward and explained the funds are coming from the Affordable Housing Trust Fund (AHTF); which was established in 2003 and requires approval of the Board of Selectmen and they have authorized the funds to be expended. Mr. Dunn asked if this is a typical use of the AHTF and Mr. Sadwick explained that in the past there have been some smaller buy outs, but not on this large of a scale.

Mrs. Bartalamia asked if Attorney Zaroulis has an opinion on this matter and Attorney Zaroulis explained that Attorney Barbrowski is the town's special council on this matter as he has a great deal of expertise in this area and he endorses everything he has stated this evening. Attorney Zaroulis feels this is a good use of the funds.

Mr. Dugan asked how long the regulatory agreement will be in place and Attorney Barbrowski explained forever. Mass Housing will monitor the project for a period of 30 years and the town will then come in once the 30 years have gone by.

Attorney Barbrowski explained how the \$1.7 million figure was determined.

Mr. Dugan opened the hearing to the public.

**MOTION:** Mr. Dunn made the motion to close both parts of the hearing; seconded by Mr. Kutcher and the motion carried 3-0.

**MOTION:** Mr. Dunn made the motion to approve DSF IV Tewksbury Owner, LLC, for an amendment to the Comprehensive Permit issued on May 26, 1988 as recorded at Middlesex North Registry of Deeds in Book 4982, Page 326, to address the affordability restriction and other regulatory conditions as drafted for the Board on July 30, 2015. Said property is located at 11 Old Boston Road, Assessor's Map 48, Lots 21, 33, and 80, zoned multi-family, Commercial and Village Mixed Use Overlay Districts; seconded by Mr. Kutcher and the motion carried 3-0.  
DUGAN, DUNN, KUTCHER

**MOTION:** Mr. Dunn made the motion to extend the filing date for the amended comprehensive permit with the town clerk to October 16, 2015 for DSF IV Tewksbury Owner, LLC, for a modification of the Comprehensive Permit issued on May 26, 1988 as recorded at Middlesex North Registry of Deeds in Book 4982, Page 326, to address the affordability restriction and other regulatory conditions. Said property is located at 11 Old Boston Road, Assessor's Map 48, Lots 21, 33, and 80, zoned multi-family, Commercial and Village Mixed Use Overlay Districts; seconded by Mr. and the motion carried 3-0.  
DUGAN, DUNN, KUTCHER

#### **New Business**

There was no new business.

#### **Old Business**

There was no old business.

#### **Adjourn.**

**MOTION:** Ms. Bartalamia made the motion to adjourn; seconded by Mr. Kutcher and the motion carried 5-0.

*Approved: 8/27/15*

Approval of Minutes – June 25, 2015

## NEW HEARINGS

- 6:30 P.M.**      **Robert Socha and Tiffany Caron** for a variance under Section 4130, Appendix B and a Special Permit under Section 3651 of the Tewksbury Zoning Bylaw to construct a 6' x 34' front porch as shown on plans filed with this Board. Said property is located at **41 Patten Road**, Assessor's Map 56, Lot 124, zoned Residential.
- *Application packet dated 7/3/15.*
- 6:30 P.M.**      **Attorney Jared Eigerman for BGM 358 Shawsheen LLC** as a party aggrieved under Section 3650 for review of a decision made by the Building Commissioner in a letter dated July 9, 2015. For a Special Permit from Section 3651 of the Tewksbury Zoning Bylaw to raze the existing structures and construct a new single family dwelling as shown on plans filed with this Board. Said property is located at **358 Shawsheen Street**, Assessor's Map 70, Lot 59, zoned Residential.  
*(Applicant requesting to be continued to 9/24/15.)*
- *Letter 7/28/15 fr Dalton & Finegold.*
- 6:30 P.M.**      **DSF IV Tewksbury Owner LLC**, for a modification of the Comprehensive Permit issued on May 26, 1988 as recorded at Middlesex North Registry of Deeds in Book 4982 Page 326, to address the affordability restriction and other regulatory conditions. Said property is located at **11 Old Boston Road**, Assessor's Map 48, Lots 21, 33, and 80, zoned Multi-Family, Commercial and Village Mixed Use Overlay Districts.
- *Application packet dated 7/13/15.*